IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9059 OF 2005

M/s Deepak Engineering Co. & ors. .. Petitioners.
Vs
Devendra Hemchandra Rajopadhye .. Respondent

Mr U.P.Warunjikar, for the petitioners.
Mr A.S.Khandeparkar a/w mr Anilkumar Joshi, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 03.10.2006
PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr Khandeparkar, learned counsel, waives service for the respondent. By consent, rule is heard finally.

3. The petitioners have impugned the order dated 4.10.2005 passed on the application filed by them at Exhibit-12 in Special Summary Civil Suit No.40 of 2005 under Order 37 Rule 3(5) of CPC, seeking leave to defend the suit. The operative part of the impugned order dated 4.10.2006 reads thus :

> "1. Application is allowed as follows.
>
> 2. Leave to defend is granted in favour of the defendants on condition to deposit the amount of Rs.15,22,000/- in the court on or before 14.11.2005. If the defendants fail to deposit said amount within period, order granting leave

to defend the suit stands vacated automatically.

On deposit of said amount, Assistant Superintendent (Nazir) of this Court is hereby directed to invest said amount in fixed deposit in any nationalised Bank for the period of one year."

This Court, on 9.1.2006 in paragraph 4 of the order, issued the following directions:

a) In the event petitioners' depositing a sum of Rs.5.00 lakh (Rs.Five lakh only) in trial Court by 13th February, 2006, notice shall be issued to the respondent to appear before this Court on 20th February, 2006.

b) Needless to state that if the amount is not deposited by 13th February, 2006, the petition to stand dismissed without reference to this court.

c) Needless to state that in the light of this direction, the time granted by the trial Court to deposit the amount would stand extended appropriately."

Today, Mr Warunjikar, learned counsel for the petitioners, on instructions from his client who is present in the court, states that Rs.9,50,000/- being the cheque amount and that the petitioners have already deposited Rs.Five lakhs as per the order dated 9.1.2006 thay are prepared to deposit Rs.4,50,000/- in the trial Court within 12 weeks from today. In view of his statement, Mr Khandeparkar, learned counsel for the respondent, has not objected for modification of the

order dated 4.10.2005, impugned in the present writ petition and has prayed for direction to the trial Court to dispose of the suit within timeframe. In the circumstances, I am satisfied that the following order shall meet the ends of justice.

(a) Paragraph 2 of the operative part of the impugned order stands modified as under:

> "Leave to defend is granted in favour of the defendants on condition to deposit the amount of Rs.9,50,000/- in the court on or before 31.12.2006. If the defendants fail to deposit the said amount within the time aforestated, the order granting leave to defend the suit shall stand vacated automatically."

(b) The trial Court shall proceed with the suit and dispose it of as expeditiously as possible and preferably within a period of six months from the date of receipt of this order.

(c) The trial Court need not stay the proceedings until the petitioners deposit the balance of Rs.4,50,000/-. If the petitioners fail to deposit the said amount, their defence will be struck of and in that event the trial Court shall pass appropriate orders in accordance with law.

(d) Rule is disposed of.

(D.B.BHOSALE,J.)